

**Illinois Department of Revenue
Regulations**

Title 86 Part 700 Section 700.400 Reasonable Cause

TITLE 86: REVENUE

**PART 700
UNIFORM PENALTY AND INTEREST ACT**

SUBPART D: REASONABLE CAUSE

Section 700.400 Reasonable Cause

- a) *The penalties imposed under the provisions of Sections 3-3, 3-4, 3-5, and 3-7.5 of the Act shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause. Reasonable cause shall be determined in each situation in accordance with this Section. (Section 3-8 of the Act)*
- b) The determination of whether a taxpayer acted with reasonable cause shall be made on a case by case basis taking into account all pertinent facts and circumstances. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion.
- c) A taxpayer will be considered to have made a good faith effort to determine and file and pay his proper tax liability if he exercised ordinary business care and prudence in doing so. A determination of whether a taxpayer exercised ordinary business care and prudence is dependent upon the clarity of the law or its interpretation and the taxpayer's experience, knowledge, and education. Accordingly, reliance on the advice of a professional does not necessarily establish that a taxpayer exercised ordinary business care and prudence, nor does reliance on incorrect facts such as an erroneous information return.
- d) The Department will also consider a taxpayer's filing history in determining whether the taxpayer acted in good faith in determining and paying his tax liability. Isolated computational or transcriptional errors will not generally indicate a lack of good faith in the preparation of a taxpayer's return.
- e) Examples of Reasonable Cause. The following non-exclusive list of situations will constitute reasonable cause for purposes of the abatement of penalties:
 - 1) Reasonable cause for abatement of penalty will exist if a liability results from amendments made by the Department to regulations or formal administrative policies or positions after the return on which the liability was computed was filed.

- 2) Reasonable cause for abatement may also be based on the death, incapacity or serious illness of the taxpayer (or his tax preparer) or a death or serious illness in his or her immediate family which causes a late filing and payment of tax due. In the case of a corporation, estate, trust, etc., the death, incapacity, or serious illness must have been of an individual having sole authority to file the return (not the individual preparing the return) or make the deposit/payment, or a member of such individual's immediate family.
- 3) An unavoidable absence of a taxpayer (or tax preparer) due to circumstances unforeseeable by a reasonable person may also constitute reasonable cause for purposes of abatement of the penalty. An unavoidable absence does not include a planned absence such as a vacation. In the case of a corporation, estate, trust, etc., the absence must have been of an individual having sole authority to file the return (not the individual preparing the return) or make the deposit/payment.
- 4) Inability to timely obtain records necessary to determine the amount of tax due to reasons beyond the taxpayer's control. For example, some taxpayers, particularly those with income from banks, partnerships, trusts, estates or Subchapter S corporations, must secure information from those entities in order to properly compute the amount of tax due.
- 5) Factors beyond taxpayer's control such as destruction by fire, other casualty or civil disturbance, of the taxpayer residence or place of business records.
- 6) Taxpayer mailed the return or payment to the Department in time to reach the Department on or before the due date, given the normal handling of the mail. However, through no fault of the taxpayer, the return or payment was not delivered within the prescribed time period. This fact situation would constitute reasonable cause for abatement of the penalty.
- 7) Reasonable cause will exist for purposes of abatement of the penalty if a taxpayer makes an honest mistake, such as inadvertently mailing a Department of Revenue check to a local government, another state's Department of Revenue, or to the Internal Revenue Service.
- 8) An Illinois appellate court decision, a U.S. appellate court decision, or an appellate court decision from another state (provided that the appellate court case in the other state is based upon substantially similar statutory or regulatory law) which supports the taxpayer's position will ordinarily provide a basis for a reasonable cause determination.
- 9) The Department gave erroneous information, or delayed a process under its control. In making such a determination the Department will consider:
 - A) Did the taxpayer provide accurate information upon which to base the tax?
 - B) Was the information requested by the taxpayer easily available in instructions or bulletins?

- C) Did the taxpayer rely on the advice?
 - D) Did an employee who was acting in an official capacity and was authorized to provide assistance provide the advice?
 - E) Was the taxpayer's reliance upon the advice reasonable?
- 10) Taxes withheld by an employer for the wrong state. A taxpayer may not realize that withholding taxes are being withheld and remitted to the wrong state until the end of the taxable year when he or she receives a W-2. The taxpayer will be required to produce all documentation necessary to demonstrate that he or she had a reasonable belief that taxes were being withheld for the proper state.
 - 11) Embezzlement or employee fraud not reasonably within the knowledge of the taxpayer.
 - 12) The following occurrences are situations involving reasonable cause with respect to the imposition of the Tier 2 late filing penalty:
 - A) Taxpayer demonstrates that he or she did not receive the penalty notice. If the taxpayer can show that he or she filed a change of address card, tax return, payment or letter with the Department and the Department still sent the notice to the wrong address, penalty abatement may be warranted.
 - B) Taxpayer was on active duty in the military. Taxpayers serving in the military may find themselves in situations where it takes an extraordinary length of time to receive and respond to a notice.
- f) Relevant factors used by the Department in determining the existence of reasonable cause.
- 1) Could the taxpayer's federal filing status have caused confusion about his or her Illinois filing requirements? Under Illinois law, many taxpayers that are not required to file with the Internal Revenue Service are required to file with the Department.
 - 2) Does the taxpayer's reason address the penalty assessed? For example, if a taxpayer was assessed both a late filing and late payment penalty for the same return, the taxpayer's explanation of the failure to file and pay may apply to one penalty, but not the other.
 - 3) Does the length of time between the reason cited and the actual violation support abatement? If the taxpayer cites a specific event or set of events (e.g., illness, unexpected absence, or natural disaster) or set of events that led to the imposition of the penalty, the Department will determine whether those events are directly related to the return or payment under review.

- 4) Could the event cited have been reasonably anticipated? Was the event one that should have been anticipated (e.g., a vacation or scheduled absence) or was it unexpected, unavoidable, or otherwise unplanned (e.g., an emergency or disaster).
- 5) Was ordinary business care and prudence exercised? In the absence of new or unusual circumstances, most filing and payment requirements are common knowledge or are readily available to most taxpayers. If the taxpayer did all that could be reasonably expected of him or her and was still unable to file or pay on time, reasonable cause may be present.

(Source: Amended at 25 Ill. Reg. 5038, effective March 23, 2001)